Decision **DRAFT DECISION OF ALJ VIETH (Mailed 9/12/2001)**

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Investigation on the Commission's Own Motion into the Rates, Charges, and Practices of Water and Sewer Utilities Providing Service to Mobilehome Parks and Multiple Unit Residential Complexes and the Circumstances under which those Rates and Charges can be Passed to the End User.	Investigation 98-12-012 (Filed December 17, 1998)

OPINION ON PETITION FOR MODIFICATION OF DECISION 01-05-058

1. Summary

We modify Decision (D.) 01-05-058 to clarify our general guidance regarding what water rate the owner / operator of a mobilehome park (MHP) with a submetered water system may charge park tenants. We reiterate the two options outlined in D.01-05-058, which turn on whether or not the park owner / operator chooses to remove the capital and operation costs associated with the submeter system from rent. However, we delete confusing language in D.01-05-058 which erroneously suggests that the terms "applicable rate" and "prevailing rate" are synonymous. We further clarify that nothing in D.01-05-058 should be interpreted to prohibit the MHP owner / operator from passing lifeline rate discounts on to eligible tenants.

2. Procedural Background

On May 14, 2001 the Commission issued D.01-05-058 in Investigation (I.) 98-12-012, a quasi-legislative proceeding opened to explore "concerns raised about the legitimacy of charges for water and sewer services imposed on tenants by the owners of multiple unit residential complexes and mobilehome parks." (I.98-12-012, *slip. op.* at 1.) D.01-05-058 closed that proceeding.

On June 6, 2001, Western Manufactured Housing Communities Association (WMA) filed a petition for modification of D.01-05-058, thereby reopening I.98-12-012. On June 28, WMA filed a supplement to its petition, and on July 30, Golden State Mobilehome Owners League (GSMOL) filed a single response to these pleadings. No other parties to I.98-12-012 have filed.

3. Rule 47

Rule 47 of the Commission's Rules of Practice and Procedure governs the filing of a petition for modification.[1] While WMA's petition does not specifically mention Rule 47, the Commission's Docket Office accepted that pleading for filing under the Rule, as well as the supplement to the petition and GSMOL's response. GSMOL challenges the petition for failure to comply with Rule 47(b), which requires the petitioner to "propose specific wording to carry out all the requested modifications to the decision". Neither the petition nor the supplement does so, though both clearly explain what WMA seeks and why.

[1] Unless otherwise indicated, all subsequent citations to rules refer to the Rules of Practice and Procedure, which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulation, and citations to sections refer to the Public Utilities Code.

While we could dismiss the petition for this technical noncompliance with Rule 47, we decline to do so. As GSMOL recognizes, we have discretion to construe our Rules liberally. Rule 87, in pertinent part, expressly permits liberal construction "to secure just, speedy and inexpensive determination of the issues presented". From time to time, when we have determined that the public interest warranted it, we have entertained other petitions for modification which, though they lacked specific, proposed wording, were sufficiently clear to permit us to consider them on the merits. (See for example, *Re: Southern California Gas Company*, D.01-02-076, slip op.; 2000 Cal. PUC LEXIS 353.) WMA has met all other technical requirements of Rule 47. We believe that WMA's request for clarification of our decision in I.98-12-012, a proceeding with policy implications for all CPUC-regulated water utilities, should be considered on the merits, so that our decision may be applied in utility-specific ratesetting or adjudicatory proceedings, as necessary.

Section 1708 permits the Commission to modify a prior decision after affording due process to the parties, including notice and opportunity to be heard. Neither party has requested a hearing. As we discuss in greater detail below, the pleadings filed by both parties provide a sufficient record for decision. The sole, additional factual finding we make is on an undisputed issue. In all other regards, we decide the legal and policy issues raised based upon the pleadings and review of D.01-05-058.

4. The Petition

Though D.01-05-058 addresses a large number of issues, the portion of the decision relevant to WMA's petition and GSMOL's response is the discussion of the "rate" a MHP owner / operator may charge its tenants for water service under Pub. Util. Code § 2705.5. That statute codifies a "safe harbor" from public utility

status and attendant regulation by the CPUC – in other words, nonpublic utility status -- for MHPs (and multi-unit apartments) with submetered water systems that charge each tenant "at the rate which would be applicable if the user were receiving the water directly from the water corporation".[2]

With respect to this rate, also referred to in D.01-05-058 as the "applicable rate, " the decision explains:

> The question of whether a MHP is charging its tenants the "rate" that qualifies for the § 2705.5 exemption can only be determined on a case by case basis. Because the "rates" of water corporations vary in numerous ways, there is no formula that we can provide beyond the clear language of the statute …" (D. 01-05-058, mimeo. at pp. 27-28.)

Footnote 20 in D.01-05-058 summarizes some of the factors and ratemaking conventions that result in the differences among the rates set for different water corporations:

> For example, as a general rule the rates of the largest water corporations (Class A) vary based on the size of the customer's water meter. Once the water meter size is identified, then "rates" include a service charge which includes up to 50% fixed costs and a commodity (or volumetric) charge that includes the balance of the fixed costs. In contrast, the charges of smaller CPUC-regulated water utilities (Classes B, C and D) are based

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[2] Section § 2705.5 provides in relevant part:

> *Any person or corporation* … that maintains a mobilehome park or a multiple unit residential complex and *provides … water service to users through a submeter service system is not a public utility* and is not subject to the jurisdiction, control, or regulation of the commission *if each user* of the submeter service system *is charged at the rate which would be applicable if the user were receiving the water directly from the water corporation*. (§ 2705.5, emphasis added.)

> on different generic and, sometimes, individual considerations. (*Id.* at 28, footnote 20.)

However, D.01-05-058 goes on to provide general guidance regarding an appropriate formulation of the "applicable rate." The first issue we address in this decision is WMA's request that we clarify that general guidance, pointing to language in D.01-05-058 which it considers confusing. The language appears at the end of a longer passage on pages 29-30 of the decision (mimeo), which we quote below. For ease of reference, we have italicized the questioned language.

> In examining the water charges at a given MHP, we must consider whether the MHP's rent structure includes recovery of water expenses –specifically capital and operation costs associated with the submeter system. [footnote omitted] Consistent with our discussion above, we conclude that the MHP owner / operator may not have it both ways. Either these charges must be removed from rent altogether, and then the submeter customer may be charged *the same rate applicable to any other residential customer (i.e., the "prevailing rate")*, or the submeter customer may be charged only for volumetric submeter usage plus a pro rata allocation of any other charges billed to the master meter. (D.01-05-058, mimeo. at pp. 29-30, emphasis added.)

We can understand WMA's confusion and reject GSMOL's argument that the decision is clear. As the following discussion will demonstrate, the parenthetical modifying term -- (i.e., the "prevailing rate") -- should be deleted. The term "applicable rate", as D. 01-05-058 interprets it for the purposes of §2705.5, is not a synonym for "prevailing rate". Elsewhere, the decision notes that the "prevailing rate" is the term used by a number of parties to this proceeding, including WMA, to describe "the sum of all rate elements the water corporation would charge the [MHP] tenant as a directly-served end user: applicable volumetric rate, customer service charge (sometimes referred to as

"readiness-to-serve charge"), and any taxes." (*Id.* at 24.) However, D. 01-05-058 cautions that "the water corporation's statement of 'prevailing rates' is *not* a conclusive determination of the 'applicable rate'." (*Id.* at 28, emphasis added.) D.01-05-058 identifies special rate components "such as surcharges or taxes collected by the water corporation for a specific purpose" as examples of components which, unlike the customer service charge, should not be assessed to tenants except as a pro rata share of the actual charge for the master meter service. (*Id.*) These are unique items that do not represent costs associated with the water corporation's distribution system and consequently have no relationship to the costs of a submeter system provided to MHP tenants. D.01-05-058 explains:

> For example, it is reasonable to conclude that a local tax which the water corporation is obliged to charge its direct customers but which the MHP is not required to collect from submeter customers is not a component of the "applicable rate" that can be charged to each submeter customer. Instead, it is reasonable to charge submetered customers only a pro-rata share of the tax actually charged to the MHP by the water corporation. Using this method, the tax is paid, as intended, to the local government; the MHP does not reap a financial benefit from the tax collection, nor, does the MHP suffer a tax-induced financial loss. (*Id.* at 28-29.)

In light of this discussion, we will further modify the language at pages 29-30 of D.01-05-058 to more accurately reflect the discussion which precedes it. The revised text, with deletions marked in strikethrough format and additions in italics, should read:

> In examining the water charges at a given MHP, we must consider whether the MHP's rent structure includes recovery of water expenses –specifically capital and operation costs associated with the submeter system. [footnote omitted]

> Consistent with our discussion above, we conclude that the MHP owner / operator may not have it both ways. Either these charges must be removed from rent altogether, and then the submeter customer may be charged the same rate applicable to any other residential customer ~~(i.e., the "prevailing rate")~~, *adjusted as discussed above,* or the submeter customer may be charged only for volumetric submeter usage plus a pro rata allocation of any other charges billed to the master meter.

Having clarified that the "applicable rate" and the "prevailing rate" are not the same, we consider WMA's four, more specific requests for clarification:

1. In the event a MHP owner removes capital and operation costs from rent, and there is a dispute from a resident, that the Commission will be the body that will resolve such a dispute. (Petition at 4.)

We agree with GSMOL that D.98-01-058 requires no clarification on this point. D.98-01-058 indicates the answer depends, in part, upon the nature of the dispute and the particularity of the pleading. For example, the Commission lacks jurisdiction to set MHP rents, whether the park is subject to a rent control ordinance or not, and cannot confer upon itself jurisdiction it does not have. However, rent control boards are bound by the Commission's utility rate determinations. (*Rainbow Disposal* (1998) 64 Cal. App 4th 1159, 1167.) So, too, are the superior courts. The Commission's authority in such matters is exclusive, subject to review only by the Supreme Court and the courts of appeal. (See *Pacific Telephone. & Telegraph Co. v Superior Court* (1963) 60 C.2d 426, 428-30.)

2. In the event a MHP owner removes capital and operations costs from rent, identification of the components of the "same rate applicable to any other residential customer" that an MHP may assess. (Petition at 4.)

As we discuss above, D.01-05-058 addresses this issue and provides examples of specific-purpose rate components (municipal taxes, certain surcharges) that the MHP owner / operator may collect from submetered tenants only on a pro rata basis. The large number of regulated water utilities, and the differences in their sizes and operating costs and consequently, in their rate structures, does not permit a more precise formulation. We agree with GSMOL that this issue requires no further clarification.

3. Clarification of whether the "applicable rate" as discussed in the decision is that rate that results from the second option listed [in the petition]. (Petition at 4.)

In the context of WMA's petition, it is clear that WMA refers to the situation where the MHP owner / operator chooses to keep the capital and operation costs associated with the submeter water system embedded in the rent. Then, in accordance with D.01-05-058, the MHP owner / operator is limited to directly billing for water on a pass through basis. That is, the MHP owner / operator may assess each tenant only for that tenant's submetered, volumetric usage plus a pro-rata allocation of other charges billed to the master meter, which will provide full recovery of the master meter bill. Because costs of the submeter system remain embedded in rent, they continue to be recovered in rent.

We explain the meaning of the term "applicable rate" in the discussion, above, and distinguish it from the term "prevailing rate." We believe our revision to pages 29-30 of D.01-05-058 will remove any unintended confusion on this point and that no further modification is necessary.

4. Clarification of how a MHP would fall under the application of Section 2705.5 of the Public Utilities Code. (Petition at 4.)

We believe our revision to pages 29-30 of D.01-05-058 will remove any unintended confusion on this point and that no further modification is necessary.

5. The Supplement to the Petition

WMA filed the supplement to its petition in the course of its participation in a separate proceeding, Application (A.) 00-09-046, in which Southern California Water Company (SoCalWater) seeks authority to establish a lifeline rate in Regions II and III of its service territory. WMA has appeared in A.00-09-046 to advocate that MHP tenants at parks with submetered water systems should receive the benefit of any lifeline rate the Commission may approve. The central issue raised in WMA's supplement is that a literal reading of the billing alternatives established by D.01-05-058 may prevent the pass through to eligible tenants of lifeline rate reductions. WMA served its supplement on the service lists in both this proceeding and A.00-09-046. GSMOL's response, the only one filed, does not address this issue directly.

WMA's concern focuses on the billing alternative D.01-05-058 establishes for a MHP owner / operator who chooses not to remove from the rent the embedded capital and operation costs associated with the submeter water system. In such a case:

> … the submeter customer may be charged only for volumetric submeter usage plus a pro rata allocation of any other charges billed to the master meter. (D. 01-05-058 at pp. 29-30.)

WMA asks that we exempt lifeline programs from D.01-05-058 or revise the decision to clarify that MHP owners / operators are not prohibited from passing lifeline discounts onto their tenants at parks with submetered water systems. We agree that tenants at submetered parks should be able to enjoy the

benefits of a lifeline rate if they meet the eligibility requirements. Therefore we will modify D.01-5-058 as follows:

> … the submeter customer may be charged only for volumetric submeter usage plus a pro rata allocation of any other charges billed to the master meter. *However, nothing in this decision shall be interpreted to prohibit the master meter owner/operator from passing lifeline rate discounts on to eligible submeter customers.*

We will defer review of the specific lifeline proposals at issue in A.00-09-046, and the mechanics for implementing them at MHPs, to a decision in that proceeding since the evidence is part of the record of that proceeding, and not I.98-12-012.

6. Conclusion

We should modify the text of D.01-05-058 consistent with the discussion above, and add corresponding findings and ordering paragraphs, as necessary.

Comments on Draft Decision

The draft decision was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure.

Findings of Fact

1. WMA's request for clarification of D.01-05-058 should be considered on the merits so that the decision's policy implications may be applied in future utility-specific ratesetting or adjudicatory proceedings.

2. The parenthetical modifying term -- (i.e., the "prevailing rate") – in D.01-05-058 at pages 29-30, mimeo, should be deleted since the discussion which precedes it makes clear that the term "applicable rate" is not a synonym for "prevailing rate."

3. Tenants at submetered parks should be able to enjoy the benefits of a lifeline rate if they meet the eligibility requirements.

4. Review of the specific lifeline proposals at issue in A.00-09-046, and the mechanics for implementing them at MHPs, should be deferred to a decision in that proceeding since the evidence is part of the record of that proceeding, and not I.98-12-012.

Conclusions of Law

1. We should interpret WMA's compliance with Rule 47 liberally, as Rule 87 permits, and should not dismiss the petition and supplement for failure to include proposed modifying language.

2. The language found in D.01-05-058 (at pages 29-30, mimeo), which is questioned in the petition, is confusing and should be revised.

3. Hearings are unnecessary as the pleadings filed by both parties provide a sufficient record for decision.

4. In order to provide guidance to the parties, this order should be effective today.

O R D E R

IT IS ORDERED that:

1. The petition for modification of D.01-05-058 and the supplement to the petition, filed by Western Manufactured Housing Communities Association (WMA), are granted to the extent consistent with Ordering Paragraphs 2 and 3, and otherwise are denied.

2. The following text in D.01-05-058, at pages 29-30, mimeo, is modified to read:

> In examining the water charges at a given MHP, we must consider whether the MHP's rent structure includes recovery of water expenses –specifically capital and operation costs

associated with the submeter system. [footnote omitted] Consistent with our discussion above, we conclude that the MHP owner / operator may not have it both ways. Either these charges must be removed from rent altogether, and then the submeter customer may be charged the same rate applicable to any other residential customer ~~(i.e., the "prevailing rate")~~, *adjusted as discussed above,* or the submeter customer may be charged only for volumetric submeter usage plus a pro rata allocation of any other charges billed to the master meter. *However, nothing in this decision shall be interpreted to prohibit the master meter owner/operator from passing lifeline rate discounts on to eligible submeter customers.*

3. A new Finding of Fact 21 is added to read:

   Tenants at submetered parks should be able to enjoy the benefits of a lifeline rate if they meet the eligibility requirements.

4. This proceeding is closed.

   This order is effective today.

   Dated _____, at San Francisco, California.